

**ASSEMBLY BILL**

**No. 1337**

**Introduced by Assembly Member Daucher**

February 21, 2003

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An act to amend Sections 56366.1 and 56505.2 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as introduced, Daucher. Special education.

(1) Existing law sets forth a method for providing special education and related services to pupils with exceptional needs. Existing law also permits, under certain circumstances, contracts to be entered for the provision of those services by nonpublic, nonsectarian schools or agencies, as defined. Existing law authorizes a master contract for special education and related services provided by a nonpublic, nonsectarian school or agency only if the school or agency has been certified as meeting specified standards. Existing law sets forth the certification process and procedures for the nonpublic, nonsectarian schools or agencies that seek certification.

This bill would also authorize a school district, county office of education, or special education local plan area to seek certification. The bill, in addition, would make related changes.

(2) Existing law provides that a hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or in a service for an individual with exceptional needs provided by a nonpublic agency, if the school or agency has not been certified. Existing law requires a hearing officer to consider certain provisions of law relating to nonpublic, nonsectarian schools and agencies, including those relating

to certification, during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school or of service for an individual with exceptional needs provided by a nonpublic agency.

This bill would prohibit a hearing officer from rendering a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or in a service for an individual with exceptional needs provided by a nonpublic agency, if the school district, county office of education, or special education local plan area operates a program that has been certified, unless the party seeking placement or service from a nonpublic, nonsectarian school or agency proves, by a preponderance of the evidence, that the program operated by the school district, county office of education, or special education local plan area is not able to provide a free appropriate public education to the individual.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 56366.1 of the Education Code is
- 2 amended to read:
- 3 56366.1. (a) A nonpublic, nonsectarian school or agency *or*
- 4 *a school district, county office of education, or special education*
- 5 *local plan area* that seeks certification shall file an application with
- 6 the superintendent on forms provided by the department and
- 7 include the following information on the application:
- 8 (1) A description of the special education and designated
- 9 instruction and services provided to individuals with exceptional
- 10 needs if the application is for nonpublic, nonsectarian school
- 11 certification *or program certification of a school district, county*
- 12 *office of education, or special education local plan area.*
- 13 (2) A description of the designated instruction and services
- 14 provided to individuals with exceptional needs if the application
- 15 is for nonpublic, nonsectarian agency certification.
- 16 (3) A list of appropriately qualified staff, a description of the
- 17 credential, license, or registration that qualifies each staff member
- 18 to render special education or designated instruction and services,
- 19 and copies of their credentials, licenses, or certificates of



1 registration with the appropriate state or national organization that  
2 has established standards for the service rendered.

3 (4) An annual operating budget.

4 (5) Affidavits and assurances necessary to comply with all  
5 applicable federal, state, and local laws and regulations which  
6 include criminal record summaries required of all nonpublic  
7 school or agency personnel having contact with minor children  
8 under Section 44237.

9 (b) If the applicant operates a facility or program on more than  
10 one site, each site shall be certified.

11 (c) If the applicant is part of a larger program or facility on the  
12 same site, the superintendent shall consider the effect of the total  
13 program on the applicant. A copy of the policies and standards for  
14 the nonpublic, nonsectarian school or agency *or for the school*  
15 *district, county office of education, or special education local plan*  
16 *area* and the larger program shall be available to the  
17 superintendent.

18 (d) Prior to certification, the superintendent shall conduct an  
19 onsite review of the facility and program for which the applicant  
20 seeks certification. The superintendent may be assisted by  
21 representatives of the special education local plan area in which the  
22 applicant is located and a nonpublic, nonsectarian school or  
23 agency representative who does not have a conflict of interest with  
24 the applicant. The superintendent shall conduct an additional  
25 onsite review of the facility and program within four years of the  
26 ~~certification~~ effective date *of the certification*, unless the  
27 superintendent conditionally certifies the *nonpublic, nonsectarian*  
28 *school or agency or the school district, county office of education,*  
29 *or special education local plan area*, or unless the superintendent  
30 receives a formal complaint against the *nonpublic, nonsectarian*  
31 *school or agency or the school district, county office of education,*  
32 *or special education local plan area*. In the latter two cases, the  
33 superintendent shall conduct an onsite review at least annually.

34 (e) The superintendent shall make a determination on an  
35 application within 120 days of receipt of the application and shall  
36 certify, conditionally certify, or deny certification to the applicant.  
37 If the superintendent fails to take one of these actions within 120  
38 days, the applicant is automatically granted conditional  
39 certification for a period terminating on August 31, of the current  
40 school year. If certification is denied, the superintendent shall

1 provide reasons for the denial. The superintendent may certify the  
2 *nonpublic, nonsectarian school or agency or the school district,*  
3 *county office of education, or special education local plan area* for  
4 a period of not longer than four years.

5 (f) Certification becomes effective on the date the nonpublic,  
6 nonsectarian school or agency *or the school district, county office*  
7 *of education, or special education local plan area* meets all the  
8 application requirements and is approved by the superintendent.  
9 Certification may be retroactive if the *nonpublic, nonsectarian*  
10 *school or agency or the school district, county office of education,*  
11 *or special education local plan area* met all the requirements of  
12 this section on the date the retroactive certification is effective.  
13 Certification expires on December 31 of the terminating year.

14 (g) The superintendent shall annually review the certification  
15 of each nonpublic, nonsectarian school and agency *and of each*  
16 *school district, county office of education, or special education*  
17 *local plan area.* For this purpose, a certified *nonpublic,*  
18 *nonsectarian school or agency or certified school district, county*  
19 *office of education, or special education local plan area* shall  
20 annually update its application between August 1 and October 31,  
21 unless the board grants a waiver pursuant to Section 56101. The  
22 superintendent may conduct an onsite review as part of the annual  
23 review.

24 (h) The superintendent may monitor a nonpublic, nonsectarian  
25 school or agency *or a school district, county office of education,*  
26 *or special education local plan area* onsite at any time without  
27 prior notice when there is substantial reason to believe that there  
28 is an immediate danger to the health, safety, or welfare of a child.  
29 The superintendent shall document the concern and submit it to the  
30 nonpublic, nonsectarian school or agency *or the school district,*  
31 *county office of education, or special education local plan area* at  
32 the time of the onsite monitoring. The superintendent shall require  
33 a written response to any noncompliance or deficiency found.

34 (i) (1) Notwithstanding any other ~~provision~~ of law, the  
35 superintendent may not certify a nonpublic, nonsectarian school  
36 or agency that proposes to initiate or expand services to pupils  
37 currently educated in the immediate prior fiscal year in a juvenile  
38 court program, community school pursuant to Section 56150, or  
39 other nonspecial education program, including independent study  
40 or adult school, or both, unless the nonpublic, nonsectarian school

1 or agency notifies the county superintendent of schools and the  
2 special education local plan area in which the proposed new or  
3 expanded nonpublic, nonsectarian school or agency is located of  
4 its intent to seek certification.

5 (2) The notification shall occur no later than the December 1  
6 prior to the new fiscal year in which the proposed or expanding  
7 school or agency intends to initiate services. The notice shall  
8 include the following:

9 (A) The specific date upon which the proposed nonpublic,  
10 nonsectarian school or agency is to be established.

11 (B) The location of the proposed program or facility.

12 (C) The number of pupils proposed for services, the number of  
13 pupils currently served in the juvenile court, community school,  
14 or other nonspecial education program, the current school services  
15 including special education and related services provided for these  
16 pupils, and the specific program of special education and related  
17 services to be provided under the proposed program.

18 (D) The reason for the proposed change in services.

19 (E) The number of staff that will provide special education and  
20 designated instruction and services and hold a current valid  
21 California credential or license in the service rendered or  
22 certificate of registration to provide occupational therapy.

23 (3) In addition to the requirements in subdivisions (a) ~~through~~  
24 *to* (e), inclusive, the superintendent shall require and consider the  
25 following in determining whether to certify a nonpublic,  
26 nonsectarian school or agency as described in this subdivision:

27 (A) A complete statement of the information required as part  
28 of the notice under paragraph (1).

29 (B) Documentation of the steps taken in preparation for the  
30 conversion to a nonpublic, nonsectarian school or agency,  
31 including information related to changes in the population to be  
32 served and the services to be provided pursuant to each pupil's  
33 individualized education program.

34 (4) Notwithstanding any other provision of law, the  
35 certification becomes effective no earlier than July 1, if the school  
36 or agency provided the notification required pursuant to paragraph  
37 (1).

38 (j) The *nonpublic, nonsectarian* school or agency shall be  
39 charged a reasonable fee for certification. The superintendent may  
40 adjust the fee annually commensurate with the statewide average

percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1– 5 pupils .....	\$ 150
(2) 6–10 pupils .....	250
(3) 11–24 pupils .....	500
(4) 25–75 pupils .....	750
(5) 76 pupils and over .....	1,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(k) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies *and school districts, county offices of education, and special education local plan areas* that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

(3) A nonpublic, nonsectarian school or agency *or a school district, county office of education, or special education local plan area* that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section

56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d) of Section 56366.

(4) A nonpublic, nonsectarian school or agency *or a school district, county office of education, or special education local plan area* that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification.

(5) ~~Not later than August 1, 1997, the~~ The State Board of Education shall issue ~~emergency~~ regulations to implement ~~the~~ *this* subdivision. The ~~emergency~~ regulations shall be developed by the Superintendent of Public Instruction, in collaboration with the Commission on Teacher Credentialing and other public agencies responsible for issuing licenses or certificates of registration to individuals providing designated instruction and services to individuals with exceptional needs. The regulations also shall be developed in consultation with statewide organizations representing public and nonpublic, nonsectarian schools or agencies that provide special education and designated instruction and services. The ~~emergency~~ regulations shall include, but shall not be necessarily limited to, all of the following:

(A) Requirements for minimum personnel qualifications for credentials to provide special education to individuals with exceptional needs issued by the Commission on Teacher Credentialing pursuant to this code and applicable federal laws.

(B) Requirements for minimum personnel qualifications for licenses or certifications of registration to provide designated instruction and services to individuals with exceptional needs issued by the California Board of Medical Quality Assurance, the Board of Behavioral Science Examiners, the Board of Consumer Affairs, and other state licensure agencies that are authorized under the Business and Professions Code to grant licenses or certificates of registration that may be applicable to the provision of designated instruction and services to individuals with exceptional needs.



1 (C) Requirements for personnel who are not licensed or  
2 credentialed to provide special education or designated instruction  
3 and services to pupils under the supervision of a credentialed or  
4 licensed professional in the service rendered, including direct and  
5 nondirect supervision requirements established by this code and  
6 the Business and Professions Code, and related regulations.

7 (D) Requirements for the certification of nonpublic,  
8 nonsectarian schools and agencies ~~to~~ *and school districts, county*  
9 *offices of education, and special education local plan areas that*  
10 provide individual and group designated instruction and services  
11 to individuals with exceptional needs.

12 ~~(6) For purposes of the Administrative Procedure Act, the~~  
13 ~~Legislature declares that the regulations issued pursuant to~~  
14 ~~paragraph (5) shall be deemed to be in response to an emergency~~  
15 ~~and necessary for the immediate preservation of the public peace,~~  
16 ~~health and safety, or general welfare by ensuring that all personnel~~  
17 ~~providing special education and designated instruction and~~  
18 ~~services to individuals with exceptional needs are appropriately~~  
19 ~~qualified to provide the services specified by a pupil's~~  
20 ~~individualized education program.~~

21 (I) The superintendent shall establish guidelines for the  
22 implementation of subdivision (a) in consultation with statewide  
23 organizations representing providers of special education and  
24 designated instruction and services. The State Board of Education  
25 shall approve the standards ~~not later than August 1, 1997.~~

26 (m) (1) ~~By September 30, 1998, the~~ *The* superintendent shall,  
27 in consultation with statewide organizations representing  
28 providers of special education and designated instruction and  
29 services, develop the procedures, methods, and areas of  
30 certification, including, but not limited to, the following:

31 (A) Information required for purposes of the application  
32 specified in subdivision (a).

33 (B) Procedures for conducting onsite reviews of the nonpublic,  
34 nonsectarian school or agency program *or the program of the*  
35 *school district, county office or education, or special education*  
36 *local plan area.*

37 (C) Provisions specific to minimum staff qualifications to  
38 provide special education and designated instruction and services  
39 that are required for certification.



(D) Provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool.

(2) The board shall issue as rules and regulations the procedures, methods, and areas of certification developed pursuant to paragraph (1).

(n) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 2. Section 56505.2 of the Education Code is amended to read:

56505.2. (a) A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic agency, if the school or agency has not been certified pursuant to Section 56366.1.

(b) A hearing officer shall consider Sections 56365, 56365.5, 56366, and 56366.1 during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or services for an individual with exceptional needs provided by a nonpublic, nonsectarian agency.

*(c) A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service being provided to an individual with exceptional needs by a nonpublic agency, if the school district, county office of education, or special education local plan area operates a program that has been certified pursuant to Section 56366.1, unless the party seeking placement or services from a nonpublic, nonsectarian school or a nonpublic agency proves, by a preponderance of the evidence, that the program operated by the school district, county office of education, or special education local plan area is not able to provide a free appropriate public education to the individual with exceptional needs.*